NO. 87-1611

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

THE CITY OF HOUSTON, ET AL.,
Petitioners

v.

MOSES LEROY, ET AL.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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ARGUMENT IN REPLY

I. THE PETITION FOR CERTIORARI WAS TIMELY FILED AND IS PROPERLY BEFORE THE COURT.

Plaintiffs' argument that the Petition for Writ of Certiorari was not filed timely (Brief at 2-5) merits little response. Counsel for Plaintiffs are either entirely unfamiliar with the Internal Operating Procedures of the United States Court of Appeals for the Fifth Circuit or they are attempting to mislead this Court. Plaintiffs cite Local Rule 35.2 to the effect that a Petition for Rehearing and a Suggestion for Rehearing En Banc are not the same. However, they ignore the fact that, pursuant to that Court's Internal Operating Procedures, the standard treatment by the Court of Appeals of the "Suggestion" is as a Petition for Rehearing. These procedures provide in pertinent part:

> "Although a copy of the suggestion for rehearing en banc is distributed to each panel judge and every active judge of the Court, the filing of a suggestion for rehearing en banc does not take the case out of the plenary control of the panel deciding the case. *A suggestion for rehearing en banc will be treated as a petition for rehearing by the panel if no petition is filed. The panel may grant rehearing without action by the full court.*"
>
> * * *
>
> "If after expiration of the specified time for requesting a poll the writing judge of the panel has also not received a request from any active member of the Court, *the panel, without further notice, may take such action as it deems appropriate on the suggestion.* However, in its order disposing of the

> case and the suggestion, the panel must enter an order denying suggestion for rehearing en banc showing no poll was requested by any judge."
> (Emphasis added.)

As one treatise puts it:

> "In this context, finality relates not to the final or interlocutory nature of the judgment on the merits but to the finality of the action taken by the lower court. If a rehearing is sought in the court below, there is no absolute certainty that the judgment below will not be altered. *Only when there is such certainty can the judgment properly be made the subject of a petition for certiorari and thus it is that the time for petitioning for certiorari commences on the date when certainty and finality attach to the action taken by the lower court.*" R. STERN, E. GROSSMAN AND S. SHAPIRO, SUPREME COURT PRACTICE, at 313 (6th Ed. 1986).
> (Emphasis added.)

Thus, under the procedures of the Court of Appeals,[1] a Suggestion for Rehearing En Banc affects the finality of the judgment until there is action by the panel, because there is no certainty as to whether the Court's judgment will be modified or not.

II. RESPONDENTS' STATEMENT OF FACTS CONTAINS ERRORS AND OMISSIONS.

Plaintiffs portray the City of Houston as apathetic or even recalcitrant in the face of its legal obligations under

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1. Here, the Plaintiffs do not challenge the validity of the procedures in the Court of Appeals; they merely ignore them. Such ignorance of procedure would be understandable for *pro se* litigants, but not for experienced attorneys claiming entitlement to fees in the range of $200 to $250 per hour. The jurisdictional argument is clearly frivolous.

the Voting Rights Act and leave the inference that only because they filed *Leroy I* did the City make the required submission. (Brief at 7) However, the City did not begin "the process of submission" after the suit was filed but rather, as the three-judge Court found, it had expeditiously prepared and completed the submission and mailed it to the Attorney General on October 16, 1975, within 8 days of the filing of *Leroy I*. (Opinion of the Court on Preliminary Injunction, entered November 6, 1975, at 3.)

Plaintiffs have consistently contended that the City had called an election without preclearance of certain annexations and that this action necessitated the filing of *Leroy II*. (Brief at 8-9.) However, the actions of the City were not legally sufficient to call an election under Texas law.[2] Thus, Plainitffs' suit was premature and the District Court found nothing to enjoin. Subsequent to the Justice Department's objection, the City did not blithely call a second election, as Plaintiffs assert. (Brief at 9.) Having negotiated with the Justice Department regarding a mixed plan of nine district council positions and five at-large positions, the City put the nine/five charter amendment on the ballot along with other issues. All of these issues were submitted for preclearance and the Justice Department approved holding an election on the nine/five issue but objected to the other propositions. (DX-23.)

The City had taken final action in calling the election on all eight issues and state law did not provide a method of "uncalling" an election. The City informed the Justice

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2. See Chapter 9 of the Texas Local Government Code and Section 44.001 of the Texas Election Code; TR. II-69-70, 72; V-55, 116-120. This issue was discussed at more length in Appellants' Brief before the Court of Appeals at 14-16.

Department that, absent an injunction, it would have to proceed with the election as called on all issues. The Justice Department then moved in *Leroy II* for an injunction to prohibit holding an election on any issue but the nine/five plan. (DX-16.)

Thus, the record is clear that Plaintiffs' request for injunction in *Leroy II*, duplicating that of the Justice Department, did not cause the City to "throw in the towel" and negotiate with the Plaintiffs.[3] (Brief at 9.) Leaving aside the Justice Department's role in the proceeding, the injunction issued did not force the City to place the nine/five proposal on the ballot and therefore, was not a catalyst in the adoption of single member districts.

Finally, Plaintiffs assert that: "There was no doubt in anybody's mind at that time about the impact of the Plaintiffs." (Brief at 10.) This is probably correct. The record is clear and even the District Court recognized that the real factor in forcing the City to single member districts was the actions of the Justice Department. (648 F. Supp. at 554; App., p. 38a.) The Plaintiffs were, at best, camp-followers.

III. PETITIONERS HAVE OFFERED SUBSTANTIAL REASONS FOR GRANTING THE WRIT.

This case presents two very important questions of law which this Court has not decided but should decide. A

3. The "negotiations" with the Plaintiffs, to the extent that they occurred, were mandated by the Justice Department's regulations requiring the City to receive input from interested parties regarding voting changes. (See 28 C.F.R. § 51.26[e], formerly 28 C.F.R. § 51.11[b][7]. Regarding the "escalation clause," Mr. Korbel testified that was something he negotiated with the Justice Department. (TR. VII-119-120.)

third question, perhaps slightly less important, relating to the award of attorneys' fees is sufficiently troubling for the lower courts and they clearly need further guidance.

A. The Catalyst Question—What Is The Evidentiary Standard?

Defendants agree with Plaintiffs' statement that the question of whether or not the Plaintiffs' litigation was a "substantial factor or a significant catalyst" involved in motivating the City to accept single-member districts is one of fact and is subject to Rule 52(a)'s clearly erroneous standard. (Brief at 16-17.)

Yet the catalyst question is complicated because, as the District Court found, "All parties agree that the immediate cause of the City's changing the method of selecting City Council members was the Department of Justice's objection to the annexations and blocking the bond election." (648 F.Supp. at 557; App. A, p. 44a.) However, the Court of Appeals concluded that this factor did not vitiate the finding that the Plaintiffs were also a catalyst to the City, observing that it was not "the Plaintiffs' burden . . . to prove that the litigation was the only causative factor in the Defendants' conduct. This is not so. The 'substantial factor' or 'significant catalyst' test does not require such exclusivity." (831 F.2d at 580, App. C, p. 105a.)

If the Court of Appeals is correct that there can be multiple catalysts, the question then is what evidence supports the District Court's finding that the Plaintiffs moved the City to single-member districts. This Court should address these evidentiary requirements. The basis for the District Court's finding that *Mann* was a catalyst to the City is very limited, consisting of the testimony of some

of the Plaintiffs and their attorneys, and two expert witnesses. None of this evidence was competent, as defined by Rule 602 of the Federal Rules of Evidence, which provides: "a witness may not testify to a matter unless evidence is introduced to support a finding that the witness has personal knowledge of the matter." None of Plaintiffs' witnesses demonstrated any personal knowledge of what motivated the City. Under *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985), there must be "two permissible views of the evidence" before the fact finder's choice cannot be clearly erroneous. To accept incompetent evidence and to disregard competent evidence to the contrary must be error and this Court should clarify that such a logical exception to *Anderson* exists.

The City's officials who had personal knowledge of the reasons for the City's actions testified that the Plaintiffs' action had no effect and that the Justice Department was the sole catalyst in their decision to accept single-member districts. They did not concede, as Plaintiffs assert (Brief at 18-19), that Plaintiffs and their litigation played a role in achieving the districts. Plaintiffs selectively quote testimony out of context to the point of distortion.[4]

The remaining proof cited is not competent under Rule 602. Timothy Cooper never addressed the catalyst issue. It is conceded the Plaintiffs were pleased with the result that the City went to single-districts. However, the cause, not the result, is the issue. Plaintiff Ben Reyes' testimony

4. The minuscule excerpts are better read in context and the pertinent testimony of Mayor Hofheinz, Mayor McConn, and Robert Collie are reproduced in Appendix I. It is clear that Hofheinz referred to the lawsuit in a political context. McConn was discussing the suit's effect on the Justice Department. Collie never expressed concern about the Plaintiffs' suit and never said what the District Court implied.

is self-serving and without any basis in personal knowledge, because he was not in City government until after the advent of single-member districts. Moreover, neither Mr. Dipple nor Mr. Garza revealed any personal knowledge as a basis for their conclusions. Finally, the fact that a Senior Assistant City Attorney agreed to settle a case is in no way probative of his views on the catalyst question.[5] (See Brief at 18-20.)

Thus, the evidence does not present two permissible views of the facts. As already noted (Petition at 12), the only basis the District Court offered for rejecting the testimony of the City's witnesses was the existence of the Hamilton & Rabinowitz contract and Mr. Korbel's speculative conclusion as to its purpose. (648 F.Supp. at 549; App. A, pp. 26a-27a.) Having already "spent more than $250,000 on outside experts and an additional half million dollars in staff time preparing for and trying the case" (Brief at 8), it is difficult to see the need to spend another $63,000 even if the City expected to retry *Mann*. The City hired several experts for work on the Clear Lake submission to the Justice Department. (TR. X-221; X-28-42.) Material from Hamilton-Rabinowitz, Inc. was included in that submission. (DX-2, see item 9-A-22.)

The City never suggested the latter contract was for the *Delaney* case, but merely offered evidence (DX-22; admitted at TR. VII-162-163) to impeach Mr. Korbel's testimony that *Mann* was the only outstanding litigation against the City at the time of that contract. It is strange

5. The City agrees that it is inappropriate to consider the attempted settlement. (Brief at 11, fn.1.) It was the Plaintiffs who raised the issue in the hearing but not without Defendants' objection to its relevancy. The District Court encouraged this inquiry, stating, "I'm curious myself," and overruled the City's objection. (TR. V-24-30.)

that Plaintiffs assert *Delaney* "had nothing to do with the at-large/single member district question." (Brief at 21.) It was brought under § 5 of the Voting Rights Act, complained about the Clear Lake annexations and alleged: "This system of councilmanic at-large elections has the effect of denial of fair representation of members of minority races on the City Council of Houston." (DX-22 at 6.) It further claimed the annexations diluted and debased the voting strength of blacks and Mexican-Americans.[6] (*Id.* at 8.)

B. Leroy II—What Are Special Circumstances?

This Court apparently has never decided what constitutes "special circumstances" under *Newman v. Piggie Park Enterprise, Inc.*, 390 U.S. 400, 402 (1968). Plaintiffs can point to no failure of the Justice Department to satisfy its statutory duty under § 5 of the Voting Rights Act. The *Leroy II* docket sheet conclusively shows no substantive action before the "cavalry" arrived. It is not that the Plaintiffs had to fold their tents and go, but that they should not be awarded fees for acting as "private attorneys general" when the United States is a party to the litigation. Whether and under what circumstances a private plaintiff can recover attorneys' fees in a Voting Rights case where the United States is also a party is a significant question this Court should address.

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6. Plaintiffs obviously have confused *Delaney* with the Taxpayers' Political Action Committee's (TPAC) cause of action. The docket sheet shows that TPAC attempted to intervene in *Leroy II*, not the *Delaney* plaintiffs. Plaintiffs' exegesis of the *Delaney* docket sheet is wrong. (Brief at 21, fn. 2.) Entries after September, 1978, include docket call on November 6, 1978. In the Southern District of Texas, cases are set for trial at docket call. Nor does it reveal any abandonment until after the Justice Department mooted the litigation (The *Delaney* docket sheet is reproduced in Appendix II.)

C. The Attorneys' Fees Awarded As Affirmed.

Plaintiffs distort the testimony of Timothy Cooper in order to suggest that the City is "quibbling about $7.00 per hour." (Brief at 25.) Cooper testified that fees for Mr. Greene and Mr. Korbel should be in the range of $125 to $150 per hour. (TR. IX-58.) That does not support a rate that *averages* $157 per hour for all the lawyers, including the least experienced ones. Mr. Cooper also testified that while overall the total hours seemed reasonable, a 10 to 20% reduction was appropriate for poor record-keeping and probable duplication. (TR. IX-67-68.) The Court of Appeals apparently agreed. (*Cf.* Brief at 26.)

While Plaintiffs stress that the District Court found their time-records adequate (Brief at 27), the Court of Appeals termed them "incomplete." (831 F.2d at 586, App. C, p. 120a.) Despite their rhetoric in defense of the record-keeping, Plaintiffs apparently agree with the appellate court's characterization because they did not file a cross-petition challenging that action. Defendants are not complaining that the hours claimed should have been discounted further, but that the Court of Appeals should have reduced the excessive hourly rate, as a separate matter from the poor record-keeping. The most glaring result of this failure is the Court of Appeals awarded $174 per hour to a lawyer at Hogan & Hartson with one year's experience. (PX-13; *cf.* the court's award in *Vaughans v. Board of Education of Prince George's County,* 598 F.Supp. 1263 [D. Md. 1984].)

Respectfully submitted,

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APPENDIX I

EXCERPTS OF TESTIMONY

[8-130]

HOFHEINZ — CROSS

councilmen weren't?

THE WITNESS: Some were, some weren't.

THE COURT: Right. But you didn't have a majority?

THE WITNESS: Did not have a majority.

THE COURT: And a lawsuit acts sometimes to jog them along, is that not true? And specifically, in this case, is that what you're saying, kind of put a little—

THE WITNESS: Specifically, what I'm saying is that the lawsuit was part of an overall political atmosphere that was being created about this; and in that sense—in the sense of bringing this as a political issue to the minds of the people, I think the lawsuit played a role; but as far as — Like I say, if they're to be compensated for legal fees for that, I know a lot of other people who are also involved in the same effort in different ways.

THE COURT: Other attorneys?

THE WITNESS: Yes. I'm sure quite a few attorneys supported me and made speeches on this issue and did things that accomplished the same result.

THE COURT: Now, the Clear Lake —

THE WITNESS: Clearly, the City Attorney who just preceded me, he was in favor of this also.

THE COURT: And who was that?

* * *

line 8, the question is, "what I am saying is the overall deal for all litigation was for single member districts." Would you read your answer?

A. "In those two cases, yes."

Q. The next question beginning at line 11 is, "Mayor Hofheinz, it is my understanding it is your testimony that this lawsuit, like a number of other things, were all factors in the determination that the city go to single member districts." Would you read your answer?

A. "Well, I want to put emphasis on the same phrase that I'll use: There were many, many influences. Certainly, this lawsuit was one of them."

Q. Thank you.

MR. GREENE: No further questions, Your Honor.

THE COURT: Fine.

Mr. Fisher?

MR. FISHER: I would ask, Your Honor, for him to go ahead and put in the next question and answer, for whatever it's worth.

THE COURT: Certainly for completeness — If that's what your position is — under the Federal rules.

MR. FISHER: Yes.

THE COURT: And, lawyers, you look at it. It's page what now?

MR. FISHER: Again, page 47 beginning at line 20,

which is the next question Mr. Greene asked.

FURTHER REDIRECT EXAMINATION

BY MR. FISHER:

Q. "As a matter of fact, the reason the City went to single member districts was just — " It says of in my copy "— A Charter Revision Election, wasn't it?" And what was your answer?

A. "I think it was because the Justice Department made us go to that election and made us go, but I wasn't the mayor at this time."

Q. So, you were testifying as an observer of a political scene or as mayor when the movement occurred?

A. Well, with regard to the ultimate decision of the Justice Department, I was a mere observer. As regards to the politics of the 1970's, I was a participant. My comment about the lawsuit that Mr. Greene asked me to repeat from my deposition a moment ago goes to that idea that there was — that there was a political atmosphere that was created in the 1970's in Houston for single member districts; and that this lawsuit was a part of that political atmosphere; but it was just a part; and it was not the proximate cause of the City's decision to go to single member districts.

MR. FISHER: That's all I have, Your Honor.

MR. GREENE: Nothing.

* * *

do know that Dallas was having a similar problem and that cities all over the state and all over the country were having similar problems. The City of Port Arthur was involved in that, may still be. Dallas was having serious problems that they got rectified, I'm not sure whether right before or right after ours; but I don't think Houston was singled out. It was happening all over the country.

THE COURT: There was litigation pending in Dallas too, was there not, at that time?

THE WITNESS: I'm sorry?

THE COURT: Litigation pending?

THE WITNESS: Yes, yes.

THE COURT: Was there litigation pending in Port Arthur?

THE WITNESS: I don't know.

THE COURT: Based on — You've been a politician for many years. How do you get the attention of somebody like the Department of Justice or the Government? Does it help to file a lawsuit or does it not help?

THE WITNESS: Well, I guess it helps to file a lawsuit because they have to pay attention to the lawsuit; but, you know, what sticks in the back of my mind — and maybe it's not relevant — but the plaintiffs had lost that lawsuit, at least, at one level; and having

been through a lawsuit myself recently, lost it at the first level, second level, and third level. So, I don't — I don't know that had any effect on the final 9/5 plan or not because —

THE COURT: If they weren't around — the plaintiffs weren't around pushing it with their litigation, filing objections to the preclearance in Clear Lake, we may not have an effect, I gather, is that what you're telling me?

THE WITNESS: No, I don't think I'm saying that. It probably had some effect. But there's no — well, I think — and you can certainly correct me if I'm wrong. But there was a Voting Rights Act that the Federal Government decided that, perhaps, we had violated; and, perhaps, we did.

THE COURT: Who would suggest that?

THE WITNESS: The Federal Government.

THE COURT: And you don't know what role the plaintiffs and their lawyers played in convincing, —

THE WITNESS: No.

THE COURT: — If at all, the Government that you were violating that?

THE WITNESS: No, I really don't.

THE COURT: If they did play a role in convincing the Department of Justice that you were violating that

and then the Department of Justice acts, would you admit then that the plaintiffs played a role — the plaintiffs' lawyers played a role in getting to — getting the change accomplished?

I know you wanted it all along; but you're one person, the Mayor; and that's most important; but you're one person.

THE WITNESS: Right.

THE COURT: If that happened, would they not have played a role in getting the change accomplished?

THE WITNESS: Well, you know, if they brought it about, well, then, they would have played a role. How big a role, I just couldn't begin to answer.

THE COURT: Mr. Fisher.

MR. FISHER: I have nothing further, Your Honor.

THE COURT: Mr. Korbel.

MR. KORBEL: Nothing further, Your Honor.

THE COURT: Fine.

Is there any objection to Mayor McConn being permanently excused, Mr. Korbel?

MR. KORBEL: None, Your Honor.

THE COURT: Fine.

You may step down. Thank you, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. Fisher, call your next witness

* * *

made, our contact — I was looking to the Department of Justice because they were the ones that had to preclear it and not the private parties.

THE COURT: Well, now, they told — didn't the Department of Justice tell you in the letter, let's see, that whatever they did would not preclude —

THE WITNESS: — Private litigants.

THE COURT: Yeah.

THE WITNESS: Sure. And —

THE COURT: And whatever that exhibit number is, it's on the second page. I think it's almost at the end.

THE WITNESS: Right. That's known. And I think my attitude was that we had faced them in the *Mann* lawsuit; and they will be back, perhaps, you know, if the Department of Justice were to preclear us; and we would have to face it, you know, in the voting rights context; but that was — we'd do that when the time came. The hurdle we had to face at that time was with the Department of Justice. That was the way that I thought about it.

THE COURT: And the letter from the Department of Justice telling you whatever we're doing will not preclude the filing of — well, the further litigation or filing or whatever — however they put it — that didn't affect you. You didn't feel that you had to get by them

in order to avoid future litigation, and that was not a motive for you to talk to these people who were plaintiffs in the litigation. That's two questions.

THE WITNESS: We came and talked — they came and talked — well, we filed — we talked to them in part, I guess, after we made our submission in February of '79 because in the — Mr. Hunter and others were telling us they had comments from Dr. Murray. Dr. MacManus responded to those. We were getting, I guess, — I don't recall precisely, but I guess we were, you know, getting feedback from the Department of Justice that there were issues they wanted to talk about. Most of our public hearings and talking with the plaintiffs or their lawyers, as I recall, came after the objection letter was put into — came out in June of '79; and then we had to decide whether to file a lawsuit in the District Court in the District of Columbia, whether to negotiate with the Department of Justice. We had some hearings to get people's input; and, as I recall, we were encouraged to do that by the Department of Justice, see if people were in favor of 14/4, 24/0, you know, whatever the plans were; and it was mainly in those instances that I recall talking to any of the parties who happened to be plaintiffs in the litigation as opposed to talking to them as plaintiffs or as lawyers for the plaintiffs in the

lawsuit. They were at that time interested citizens' groups or individuals who were commenting after the objection.

THE COURT: How do you separate the two? If they were — you know, if they were so interested and if you look at the lineup of the plaintiffs, — and it's quite a cross-section — how do you separate the two? How do you know that they're speaking as plaintiffs in the lawsuit that's still pending as opposed to interested constituents, that is, they'll negotiate with you; and seemingly, if they're in litigation, they should be following — I don't know, whatever they're doing, as far as their attorney's advice; but if they're unable to resolve this, they still have this lawsuit hanging back there where they can resolve it. How do you differentiate between the two, where the plaintiff talks to you, Ben Reyes — and he, obviously, was a very — played a very significant role in your negotiations, is that not so or no? I don't know.

THE WITNESS: Well, the context in which we had these discussions would usually be that the City Council had called a public hearing or it may have been that — you know, City Council has what they call a time on Wednesday mornings in which individuals can come and make presentations to Council; and when I would talk to — if

my recollection's right, when I talked to Mr. Reyes or I'd see some of the plaintiffs, it would be before one of those public sessions. They may call afterwards, but it was — they were political constituents in the context of those public hearings as far as I was concerned as opposed to plaintiffs in the lawsuit. I don't recall talking to them about a particular lawsuit as much as a plan they might have.

THE COURT: What they were seeking to do is what they were seeking to accomplish in their litigation, isn't that so?

THE WITNESS: But in the political spectrum. I mean, —

THE COURT: But if they failed in the political spectrum, they could always drop back and punt in their case.

THE WITNESS: My thought was always if we succeeded with the Department of Justice in their review, we'd prevail in the courthouse as well.

THE COURT: And in order to get past the Department of Justice, did you consider that the Department of Justice was considering this litigation.

THE WITNESS: I considered it more an administrative proceeding which we had to make the submission and get their approval as opposed to —

APPENDIX II

DOCKET SHEET OF

MARVIN DELANEY, ET AL.

v.

CITY OF HOUSTON, ET AL.

CIVIL ACTION NO. H-77-1426

BEFORE WOODROW SEALS, Judge

PLAINTIFFS—

1. MARVIN DELANEY
2. AL JOE GREEN
3. BURNELL A. VAUGHAN
4. GLORIA B. MARTINEZ
5. ALFONSO G. RODRIGUEZ
6. WILLIAM E. SCHWEINLE, JR.
   and
7. SUSAN R. ALLISON

DEFENDANTS—

1. CITY OF HOUSTON, TEXAS
2. FRED HOFHEINZ
3. LARRY McKASKLE
4. JUDSON W. ROBINSON, JR.
5. LOUIS MACEY
6. HOMER L. FORD
7. FRANK O. MANCUSO
8. JIM WESTMORELAND
9. FRANK E. MANN and
10. JOHNNY GOYEN

CAUSE — Pltf's voting rights are diluted under Voting Rights Act; 42 USC 1973;

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For Defendants

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
8-26-77	1	Pltfs' original complaint filed. (1) Summons Issued.
8-26-77	2	(WS) MEMO & ORDER denying TRO without prejudice to reconsideration if counsel meet certain conditions, fld a/n (Plf to serve Def Atty)
8-26-77	3	Defs' MOTION to Dismiss, fld (by lv of WS)
8-26-77 NM		*(WS) Order in re Hearing on TRO.* Entered. Appearing: David Webb for Plf Wm. E. Schweinle, Jr. Plf. For Def.: John R. Whittington, Jr. Charles M. Williams, Edw. Cazares. Statement by Webb and Whittington. Court denies TRO—does not meet prerequisites. Defs' Motion to Dismiss will not be entertained at this time. Plf will file a brief in opposition to motion to dismiss in 20 days.
8-26-77	4	Plf's PROPOSED FINDINGS re granting TRO, fld.
9- 1-77	5	Return of Summons/fld. Executed 8-26-77 on Mayor Fred Hofheinz, fld.
9-19-77	6	(WS) ORDER denying TRO, fld (Includes Court's findings) Defs are given statutory time to file Answer to complaint and plf a reasonable time to respond to Def's Motion to Dismiss) a/n

DATE	NR.	PROCEEDINGS
9-15-77	7	DEFTS' ORIGINAL ANSWER, fld.
9-30-77	8	Deft's Notice of Intention to take Deposition of Vicky Ryan on Oct. 12, 1977, fld.
10-21-77	9	Certificate of Non-Attendance for the Oral Deposition of Vicky Ryan, fld.
1- 9-78	10	DEPOSITION OF SUSAN R. ALLISON, fld.
1- 9-78	11	Certification of Questions DEPOSITION OF SUSAN R. ALLISON, fld.
1- 9-78	12	DEPOSITION OF BURNELL A. VAUGHAN, fld.
1- 9-78	13	Certification of Questions DEPOSITION OF BURNELL A. VAUGHAN, fld.
1- 9-78	14	DEPOSITION OF MARVIN C. DELANEY, fld.
1- 9-78	15	Certification of Questions DEPOSITION OF MARIN C. DELANEY, fld.
1- 9-78	16	DEPOSITION OF AL JOSEPH GREEN, JR., fld.
1- 9-78	17	DEPOSITION OF WILLIAM E. SCHEINLE, JR., fld.
1- 9-78	18	DEPOSITION OF GLORIA B. MARTINEZ, fld.
1- 9-78	19	DEPOSITION OF ALFONSO G. RODRIGUEZ, fld.

DATE	NR.	PROCEEDINGS
5- 1-78	20	(WS) DCO for July 5, '78, fld & Iss. (NP. 5-26, M. 5-26, PTO 6-23).
6-14-78	21	(NWB) MEMO & ORDER (entered at motion conference), fld. 1. Plf will file response to Motion to Dismiss o/b July 7, '78; def will respond by July 28, '78.
6-14-78		(NWB) MEMO & ORDER (continued) 2. Plf's motion for leave to amend is denied (at this time) [Def City withdraws its former position that it is not covered by the Voting Rights Act & recognizes the effect of U.S. v. Board of Commissioners of Sheffield, Alabama, 98 S.Ct. 965 (1978).]
6-27-78	22	(WS) DCO for Nov. 6, '78, fld & Iss. (NP. 6-5, M. 8-7, PTO 10-16)
7- 6-78	23	Ptlfs' RESPONSE to Defts' Motion to Dismiss and Pltfs' Motion to Strike Defts' Motion to Dismiss, fld.
8- 8-78	24	MOTION to Extend time to answer Pltf's reply to Defts' Motion to Dismiss with ORDER (WS) thereon granting same to Sept. 27, '78, fld. a/n
9-29-78	25	Defts' MEMORANDUM Attendant to Ptlfs' Motion to File a First Amended Complaint, fld.

DATE	NR.	PROCEEDINGS
11- 6-78		(WS) At docket call, case is passed to Mar./Apr.
11- 6-78	26	(WS) DCO for MARCH 5, '79, fld & Iss. (NP. na, M. na, PTO 2-16)
2-14-79	27	(WS) ORDER, that the Docket Control Order issued on 11-6-79, be vacated and hearings on any and all motions presently before this court be suspended until a Response has been received from the Dept. of Justice concerning the annexations challenged in this matter, filed. sv Parties ntfd. dd 2-15-79
5-24-79		TRANSFERRED pursuant to letter of RGG dtd May 12, 1979, to docket of Judge GEORGE E. CIRE effective June 1, 1979, Parties ntfd, sv